

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: December 2, 2005

Decided: March 1, 2006

David E. Matlusky, Esquire
The Matlusky Firm, LLC
1423 N. Harrison Street
Wilmington, DE 19806

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Mr. Aristotelis Marinis
c/o Howard R. Young Correctional
Facility
1301 East 12th Street
Wilmington, DE 19802

Re: *I/M of the Real Estate of Michele S. Burns v.
Aristotelis Marinis, and Sophia Marinis v. Michele S.
Burns and Aristotelis Marinis, Civil Miscellaneous
No. 11671-NC*

Dear Counsel and Mr. Marinis:

Two motions are before the Court: (1) Petitioner/Third-Party Respondent's Motion to Dismiss Third-Party Complaint as Moot ("Motion to Dismiss"); and (2) Petitioner's Petition to Release Funds. For the reasons stated, the Motion to Dismiss the Third-Party Complaint is denied and the Petition to Release Funds is granted. Consistent with my previous orders, the remaining issues are referred to Court of Chancery Master Sam Glasscock for consideration.

I. PROCEDURAL HISTORY

Petitioner, Michele Burns, filed this action on August 30, 2004, seeking partition as to a property in Claymont, Delaware. Her petition seeks, among other things, the sale of the property and an equitable distribution of the proceeds. The Respondent, Aristotelis Marinis, appeared at a hearing on a rule to show cause on October 8, 2004, and opposed the relief sought by Burns. After a further hearing on December 8, 2004, I entered an Order directing that Joseph J. Farnan III be appointed Trustee and charged with the responsibility of selling the property at fair market value. The Order further required Respondent to pay Burn's costs and reasonable attorneys' fees incurred as of December 8, 2004 in the amount of \$2,000 for fees and \$414.18 in costs with future costs to be charged equally between the parties.

On January 14, 2005, Respondent's mother, Sophia Marinis ("Mrs. Marinis"), moved to permit her joinder in the action. I granted that motion on March 8, 2005, and accepted for filing Mrs. Marinis's Third-Party Complaint. By Orders dated January 12 and March 8, 2005, I also referred any issues as to the division of funds after the sale of the property to Master Glasscock.

The Trustee sold the property on March 16, 2005. The net proceeds were \$21,838.89. On April 26, 2005, I ordered payment of the Trustee's fees in the amount of \$3,977.05 from the net proceeds and charged those fees equally to Burns and Respondent. I also approved payment from the proceeds of an additional \$1,185.25 in attorneys' fees to Petitioner's counsel, charged equally between Burns and Respondent. Finally, I authorized Master Glasscock to determine the appropriate distribution of

remaining net proceeds. To date, however, it does not appear that any of the net proceeds have been distributed.

On September 29, 2005, Burns moved to dismiss the Third-Party Complaint as moot. In support of her motion, Burns contends that the sale has closed and Respondent, by failing to respond to Burns' request for admissions, now has admitted that Mrs. Marinis "is not due any proceeds from the sale of the property" and "Burns is entitled to the full amount of the funds available on deposit with the Court of Chancery."¹ Burns also contends that a dismissal would not prejudice Mrs. Marinis because any claim she has against Burns and Respondent can be addressed in a court of law.

On or about January 30, 2006, Burns' counsel filed a Petition to Release Funds. The Petition seeks disbursement of \$3,599.43 (\$2,000 + \$414.18 + \$1,185.25) to Burn's counsel and \$3,977.05 to the Trustee pursuant to previous orders of the Court. No response to the Petition has been filed.

II. ANALYSIS

A. Burns' Motion to Dismiss Third-Party Complaint

Burns asserts that Respondent's failure to respond to her August 8, 2005 Request for Admissions results in an admission under Court of Chancery Rule 36. I agree. Since Respondent has not responded to the request for admissions and they were served more than six months ago, I deem requests nos. 1-27 admitted under Rule 36. Further Respondent made no effort in connection with Burns' motion to dismiss to argue that Rule 36 should not apply as written. The requests Respondent is deemed to have

¹ Burns' Req. for Admis. Nos. 26, 27.

admitted include requests nos. 26 and 27, which state: “26. Admit that Sophia [Mrs. Marinis] is not due any proceeds from the sale of the property. 27. Admit that Burns is entitled to the full amount of funds available on deposit with the Court of Chancery.” Consequently, Respondent cannot claim that Mrs. Marinis is due any proceeds from the sale of the property or deny that Burns is entitled to the full amount of funds available on deposit with the Court of Chancery.

Burns also argues that those admissions should be binding on Mrs. Marinis, as well. A Rule 36 admission, however, only binds the party to which it is directed.² Burns has not cited any authority that would support binding Mrs. Marinis. On the contrary, she has actively participated throughout this litigation and her claim does not depend on a recovery by Respondent. Moreover, Mrs. Marinis denies ever having been served with the request for admission.³ Thus, Respondent’s Rule 36 admissions do not bind Mrs. Marinis.

I also am not convinced that the partition sale mooted any of Mrs. Marinis’s claims. The Third-Party Complaint alleges that Mrs. Marinis advanced \$9,751.41 to Respondent and Burns to prevent a foreclosure sale of the house. The Third-Party Complaint further avers that Respondent and Burns both agreed, either orally or in writing, to reimburse her for that amount.⁴ In addition, Mrs. Marinis seeks imposition of

² *Alipour v. State Auto. Mut. Ins. Co.*, 131 F.R.D. 213, 215 (N.D. Ga. 1990); *Jones v. Employers Ins. of Wausau*, 96 F.R.D. 227, 229 (N.D. Ga. 1982).

³ Third-Party Pet’r’s Resp. to Pet’r’s/Third-Party Resp’t’s Mot. to Dismiss Third-Party Compl. as Moot ¶ 6.

⁴ Third-Party Compl. ¶¶ 2(a), 3.

a constructive trust against the disputed property and the proceeds of the sale of it.⁵ The record available at this stage in the litigation suggests that Mrs. Marinis' claims are sufficiently related to Burns' claims to be considered under the Court's clean-up jurisdiction. In addition, the written agreement she allegedly had with Burns may support a claim against the proceeds from the sale of the house. I therefore conclude that the Third-Party Complaint is not moot and deny the Motion to Dismiss.

B. Petition to Release Funds

By Order dated April 26, 2005, I ordered that: "The trustee's fees in the amount of \$3,977.05 shall be paid from the net proceeds and charged equally as between Ms. Burns and [Respondent] Mr. Marinis." The Petition to Release Funds as it relates to the Trustee merely seeks to implement the April 26 Order. For that reason and because there were no objections to the Petition, I grant the request to release funds to the Trustee.

Based on Orders dated December 16, 2004 and April 26, 2005, I ordered that attorney's fees be paid to The Matlusky Firm. Although I awarded those attorney's fees based on events that occurred before January 14, 2005, when Mrs. Marinis moved to join this lawsuit, she knew about the earlier proceedings and even attended them. In these circumstances and because the attorney's efforts benefited all the parties, I find that the

⁵ *Id.* at ¶ 6. Mrs. Marinis also submitted a copy of a document signed by Burns which states that her "portion of any proceeds on the sale of the home should be reduced by the above stated amount of \$9,751.41," which represents past due loan payments made by Respondent. [Mrs.] Marinis' Reply to [Ms.] Burns' Resp. to Mot. to Permit Joinder, Ex. A. To the extent Burns contends this Court lacks subject matter jurisdiction over the Third-Party Complaint because Mrs. Marinis has an adequate remedy at law, the Court may consider such documentary evidence, even though it is extrinsic to the challenged pleading. *Yancey v. Nat'l Trust Co.*, 1993 WL 155492, at *6 (Del. Ch. May 7, 1993).

equities favor granting Petitioner's petition to release the funds to pay those attorney's fees. Thus, the Register in Chancery shall disburse \$3,599.43 to The Matlusky Firm, LLC and shall charge those amounts to Respondent and Burns in accordance with the schedule attached to the letter to the Court from David E. Matlusky, dated January 19, 2006.

After payment of the Trustee's fees and attorney's fees, the trust balance will be approximately \$14,262.42. Consistent with my previous Order of April 26, 2005, I refer the parties to Master Glasscock for resolution of their respective claims to those funds. In particular, the Master is authorized to determine: (1) whether Burns or Respondent owe any monies to Mrs. Marinis; and (2) if so, how much and whether Mrs. Marinis is entitled to have her claim satisfied, in whole or in part, from the remaining proceeds from the sale of the property.

III. CONCLUSION

For the foregoing reasons, I DENY the Motion to Dismiss the Third-Party Complaint as Moot and GRANT the Petition to Release Funds.

IT IS SO ORDERED.

Sincerely,

Donald F. Parsons, Jr.
Vice Chancellor

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cc: Register in Chancery